

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LEMYRON BISHOP,

Plaintiff,

v.

No. 2:19-cv-0600-RB-CG

FEDERAL GOVERNMENT,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff's Promotional Bind-Over/Special Requests and Grievance Form, filed June 28, 2019. (Doc. 1 (Compl.).)

Plaintiff is:

requesting a bind-over on the following case [No. M-18-cv201900137, Magistrate Court, Artesia, New Mexico], that this specific case in which is/has been under investigation, be brought to the Chavez County District (Fifth Judicial) Court for the reasonings being that there are A LOT of local officials involved in current case and needs to be in a higher court for the reasonings of, more authority of self and more services of agencies and fundage necessary for whole case. . . .

I also have a specific special request for this case, being that this case is including officers, judges, agents, and other governmental personnel, I need this case to be changed to a criminal/civil case, for the reasonings of steadily being harassed by local officers, judges, and other agents of the local Filed Office, there in Roswell, NM. . . . Also with this motion/request, I request ALL the tools, services, personnel, and Facility usage needed for and throughout case. . . .

This is not your common file in, being that everyone is under the Federal Government, (whether work, live, or receive anything/benefits) this makes myself the Judge, Jury, and the prosecutor of this case. . . . (For Now I need this entered and I will send the criminal complaints and other information when I get the necessary tools/services.)

(*Id.* at 1–2.)

The complaint appears to be a notice of removal of Plaintiff's case in Magistrate Court, Artesia, New Mexico. However, "plaintiffs are not entitled to remove cases to federal court."

Robinson v. New Mexico, No. 18-2179, 2019 WL 2714040, at *1 (10th Cir. June 28, 2019) (quoting *Hamilton v. Aetna Life & Cas. Co.*, 5 F.3d 642, 643 (2d Cir. 1993) (per curiam) (“No section [of the United States Code] provides for removal by a plaintiff.”)). Furthermore, the action in Magistrate Court, Artesia, New Mexico, was dismissed with prejudice for lack of jurisdiction on June 18, 2019. Therefore, and because Plaintiff is *pro se*, the Court liberally construes Plaintiff’s Promotional Bind-Over/Special Requests and Grievance Form as a complaint.

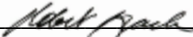
As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388, at *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass’n*, 859 F.2d 842, 843 (10th Cir. 1988)).

Plaintiff has not met his burden of showing that the Court has jurisdiction. “Sovereign immunity protects the United States and its agencies from being sued without their consent. The party asserting jurisdiction bears the burden of proving that sovereign immunity has been waived.” *Impact Energy Res., LLC v. Salazar*, 693 F.3d 1239, 1244 (10th Cir. 2012) (citations omitted). Plaintiff has not shown that sovereign immunity has been waived.

The Court will dismiss the Complaint without prejudice for lack of jurisdiction. *See Fed. R. Civ. P. 12(h)(3)* (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court,

having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

IT IS ORDERED that this case is **DISMISSED** without prejudice.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE